

November 15, 2002

(This is a substantial rewrite of existing rule Section 40E-2.321)

40E-2.321 Duration of Permit

A. General Duration Provision. When requested by an applicant, a consumptive use permit shall have a duration of 20 years provided the applicant provides sufficient data to demonstrate reasonable assurance that the proposed use meets the conditions for issuance for the requested 20 year permit duration; or otherwise, permits may be issued for a shorter duration that reflects the period for which such reasonable assurances can be provided. This determination will be made pursuant to requirements in Rule 40E-2.301, F.A.C., and the Basis of Review for Water Use Permit Applications within the South Florida Water Management District (BOR), including this section. Special Duration Factors, in Section B. below, are applied to determine the duration of a permit.

B. Special Duration Factors:

1. Unless revoked or otherwise modified, the duration of a water use permit issued pursuant to this chapter is the lesser of:

(a) The duration established in Subsections 2., ~~3.~~, 4. or 5., below.

(b) The time period for which the permit applicant demonstrates that water will be needed to meet the projected demands and during which the conditions for issuance of a permit in Rule 40E-2.301 will be met;

(c) The time period for which the permit applicant demonstrates legal control pursuant to Section 2.1 of the BOR;

(d) For irrigation uses permit applications filed before the applicable Basin Application Date in Section 1.7.2 of the BOR, the permit duration will be limited to the Basin Expiration Date;

(e) For aquifer remediations, the period shall not exceed that required to complete the operation as specified in the Remedial Action Plan approved by the state or local agency having legal jurisdiction over such activities or 20 years, whichever is less; or.

(f) For water uses that meet the conditions for issuance of a general permit pursuant to Chapter 40E-20, the duration shall be that set forth in Rule 40E-20.321.

2. The following uses will receive a 20 year permit:

(a) The requested allocation is supplied by a brackish water source, consistent with BOR criteria for use of saline water;

(b) The applicant is requesting a permit for "back-up" supplies addressing emergency or short-term interruption in service for reclaimed water end users per Section 3.2.3.3. of the BOR; or,

(c) The applicant is requesting to continue authorized historic withdrawals from a source without ~~increase in allocation or~~ change in historical impacts, if impacts during a 1 in 10 year drought event are determined to be not harmful to the water resources pursuant to Rule 40E-2.301 and the BOR, including Section 1.7.3 regarding Impact Evaluations. If requested historic withdrawals occurred during a hydrologic condition less severe than a 1 in 10 year drought, the applicant will be required to provide other reasonable assurances that the conditions for permit issuance will be met for the permit duration, pursuant to Section 1.7.3.

In instances where the applicant also requests an ~~new or increased~~ allocation over authorized historic withdrawals, the permit duration may be bifurcated such that an existing withdrawal in compliance with this section will receive a twenty year duration permit and the requested increase in withdrawal will be granted an appropriate duration in accordance with the remaining portions of this criteria.

3. Sources of Limited Availability. For purposes of Section 4., the following sources are considered to be sources of limited availability:

(a) Upper East Coast Region: Surficial Aquifer System.

(b) Lower East Coast Region: Biscayne/Surficial Aquifer System, Lake Okeechobee, Central and Southern Florida Project, the Caloosahatchee River/Canal, and the Saint Lucie River/Canal.

(c) Lower West Coast Region: Water Table Aquifer, Lower Tamiami Aquifer, Sandstone Aquifer, mid-Hawthorne Aquifer.

(d) Kissimmee Region: Upper Floridan Aquifer

4. New or Increased Withdrawals over Authorized Historic Withdrawals ~~Demands~~ from Sources of Limited Availability: In general, permit requests for ~~new or increased~~ allocations greater than ~~authorized historic withdrawals~~ ~~all~~ ~~used allocations~~ from sources with limited availability, as identified in Section 3 ~~2.~~ above, will be recommended ~~equitably allocated to meet existing demands and future demands incrementally,~~ in accordance with this rule. The baseline duration of permits for the increase over historic withdrawals ~~new or increased demands~~ from these sources of limited availability will be five years or as otherwise provided for in the factors set forth below. The following, unique factors associated with the proposed use will be considered and balanced in determining the duration of the permit:

(a) Whether the consumptive use permit will require the permittee to perform mitigative or remedial action for an impact caused or

projected to be caused by the consumptive use, and, for a renewal, whether the permittee must implement an action to correct noncompliance with the previous consumptive use permit. Consideration of this factor will lead toward a duration shorter than the applicable durations if necessary in order to evaluate at an earlier date the effectiveness of the mitigative or remedial actions or corrections.

(b) Whether the permittee is implementing innovative and extraordinary water conserving measures which are beyond those generally feasible for that type of use and such that the proposed use's demands are significantly reduced from that source as a result of the innovative and extraordinary water conserving measures. Where the permittee proposes to implement innovative and extraordinary water conservation measures, consideration of this factor will lead to a longer duration than the applicable duration as an incentive for the investment in innovative and extraordinary water conservation.

(c) The applicant is requesting an allocation above the historic documented demands, when the increased demands will be offset through the provision of an alternative source additional reclaimed water to replace other permitted uses of the affected source.

5. Pursuant to Section 373.236, the permit duration may be up to 50 years in the case of a municipality or other governmental body or of a public works or public service corporation where such a period is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities, if the conditions for permit issuance can be met for that period.

D. Compliance Reports:

Where necessary to maintain reasonable assurance that the conditions for issuance of a permit can continue to be met during the term of the permit, the District will require the permittee to submit a compliance report pursuant to subsection 373.236(3), F.S., no more than once every five years. The report shall contain sufficient information to maintain reasonable assurance that the permittee's use of water will continue, for the remaining duration of the permit, to meet the conditions for permit issuance set forth in the District rules that existed at the time the permit was issued by the District. In providing such reasonable assurance, the compliance report must, at a minimum, include all of the information specifically required by the compliance report condition(s) on the permit. These conditions will be directed toward assuring compliance with the limiting conditions contained in the permit and updating and monitoring water conservation activities pursuant to District standards.

Following the District's review of this report, the District shall require the permittee to take such actions as necessary to ensure that the use of water authorized by the permit will continue to meet the conditions for permit issuance set forth in the District rules that existed at the time the permit was issued. The District shall provide notice of intent to modify the permit as required by sections 120.569 and 120.60, F.S.

Notwithstanding the above, the District is not prohibited from requiring compliance reports at any time when necessary to ensure compliance with the terms of the permit or provisions in Chapters 40E-2 or 40E-20.